Supreme Court, U.S.
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No. 92-1658

In The

Supreme Court of the United States

October Term, 1992

IRENE MEYERS,

Petitioner,

vs.

KATHRYN GUGGENHEIM, M.D., et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does a federal district court, applying *Finley v. United States*, 490 U.S. 545 (1989), have "pendent party jurisdiction" under the federal question jurisdiction statute, 28 U.S.C. § 1331, or the federal civil rights jurisdiction statute, 28 U.S.C. § 1343(a)(3), to hear state-law medical malpractice and wrongful death claims.

PARTIES TO THE PROCEEDING

Irene Meyers is the sole petitioner. She appeals the judgment of the United States Court of Appeals for the Eighth Circuit affirming the district court's dismissal of her action against the respondents. The respondents include: Kathryn Guggenheim, M.D.; K.J. Keller, M.D.; K.H. Lee, M.D.; Berchmans Rioux, M.D.; Irwin J. Epstein, M.D.; Trinity Medical Center; and St. Joseph's Hospital. The respondents were defendants in the district court below.

The United States Bureau of Indian Affairs, its agent, Jim Azure and employee, Diane Goodluck; the City of New Town Police Department, New Town, North Dakota, and its chief of police, Arthur Naumann, were defendants in the district court below. These governmental defendants reached a settlement with petitioner, were dismissed from the litigation and were not parties to this action in the Eighth Circuit.

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RESPONDENTS' BRIEF IN OPPOSITION

The respondents, Kathryn Guggenheim, M.D.; K.J. Keller, M.D.; K.H. Lee, M.D.; Berchmans Rioux, M.D.; Irwin J. Epstein, M.D.; Trinity Medical Center; and St. Joseph's Hospital, respectfully request that this Court deny the petition for writ of certiorari, seeking review of the decision of the United States Court of Appeals for the Eighth Circuit. That decision is reported at 983 F.2d 905 (8th Cir. 1993).

STATEMENT OF THE CASE

Petitioner Irene Meyers, mother of the decedent, Kelly Meyers, brought this wrongful death action on July 3, 1990, in the United States District Court, District of North Dakota. Petitioner's son was arrested in the early morning of July 5, 1988, in New Town, North Dakota, by United States Bureau of Indian Affairs ("BIA") police (assisted by the City of New Town, North Dakota, police chief). During the course of his arrest, Kelly Meyers suffered an injury later diagnosed as a broken neck. This injury allegedly resulted from the use of excessive force in the arrest. After his overnight incarceration in the local jail, he was taken to Trinity Medical Center in Minot, North Dakota. He was then transferred to the psychiatric ward at St. Joseph's Hospital. He remained in the psychiatric ward for almost two days until he suffered respiratory failure on July 8, 1988. Kelly Meyers died on July 19, 1988.

Petitioner alleged Federal Tort Claims Act and Constitutional tort claims against the BIA, the New Town Police Department and their agents and officers, and state wrongful death and medical malpractice claims against the respondent hospitals and doctors. The claims against the BIA were brought under the Federal Tort Claims Act ("FTCA") and jurisdiction was asserted under 28 U.S.C. § 1346(b) (FTCA) and 28 U.S.C. § 1331 (federal question) over which federal courts have exclusive jurisdiction. The civil rights claims against the BIA and the City of New Town were brought pursuant to 42 U.S.C. § 1983, and jurisdiction was asserted under 28 U.S.C. § 1343(a)(3). The claims against these federal defendants were based

on the arrest and incarceration of Kelly Meyers in New Town, North Dakota, on July 5 and 6, 1988.

Petitioner sued the respondents under state law for malpractice and wrongful death over the medical treatment given to Kelly Meyers after he was transported 75 miles to Minot, North Dakota, on July 6, 1988. Diversity jurisdiction over the respondents was asserted initially and incorrectly under 28 U.S.C. § 1332. Respondents, in their answers to the complaints, immediately put petitioner on notice that federal jurisdiction over them did not exist. Further, petitioner was notified that the district court did not have jurisdiction to consider the claims against the respondents pendent to the federal action for lack of a statutory grant of such jurisdiction. Rather than take prophylactic action to ensure a forum for the state-law claims, petitioner prosecuted all claims against all defendants, including the respondents, in federal court.

The BIA, the city of New Town, their agents and employees, reached a settlement with the petitioner and were dismissed from the litigation. After the settlement and dismissal of the claims against the government defendants, only state malpractice and wrongful death claims against the respondents remained for which there was neither diversity jurisdiction nor any independent basis for federal jurisdiction. On April 17, 1991, the respondents submitted a motion to dismiss the state-law claims. On August 27, 1991, the district court dismissed the action because it did not have subject matter

jurisdiction over the respondents for lack of diversity and for lack of pendent party jurisdiction.[1]

The Eighth Circuit affirmed the district court on January 14, 1993. *Meyers v. Trinity Medical Ctr.*, 983 F.2d 905 (8th Cir. 1993). The Court of Appeals "agree[d] with the district court that neither the federal question statute, 28 U.S.C. § 1331, the federal civil rights statute, 28 U.S.C. § 1343(a)(3), nor 42 U.S.C. § 1983, contains an affirmative grant of pendent party jurisdiction as required by *Finley*." *Id.* at 907.

REASONS FOR DENYING THE WRIT

The Eighth Circuit's decision in *Meyers* is consistent with *Finley v. United States*, 490 U.S. 545 (1989). *Finley* held that pendent party jurisdiction exists only where Congress has affirmatively granted such jurisdiction. 490 U.S. at 549.

I. The Eighth Circuit's decision in *Meyers* is in harmony with all decisions of the Circuit Courts applying *Finley v. United States*.

No conflict exists in the Circuit Courts of Appeals concerning the rule in *Finley*. The Circuit Courts have consistently refused to permit the joinder of a pendent

[1] After the district court dismissed the action, petitioner abandoned diversity of citizenship as the basis for federal jurisdiction over the respondents. She also no longer relies upon 28 U.S.C. § 1346(b) (FTCA) for the exercise of pendent party jurisdiction.

party defendant under 28 U.S.C. § 1331 or § 1343(a)(3). Petitioner, nevertheless, seeks review of *Meyers* on the basis of an alleged conflict in the Circuit Courts' interpretation of *Finley*.

Petitioner relies on five cases to support her contention that a conflict exists in the Circuits: *In Re Surinam Airways Holding Co.*, 974 F.2d 1255 (11th Cir. 1992); *Nolan v. Boeing Co.*, 919 F.2d 1058 (5th Cir. 1990), *cert. denied*, 111 S.Ct. 1587 (1990); *Roco Carriers Ltd. v. M/V Nurnberg Exp.*, 899 F.2d 1292 (2d Cir. 1990); *Teledyne, Inc. v. Kone Corp.*, 892 F.2d 1404 (9th Cir. 1989); and *Rodriguez v. Comas*, 888 F.2d 899 (1st Cir. 1989). These cases, however, do not concern the issue of whether a pendent party defendant may be joined in an action under the federal question jurisdiction (28 U.S.C. § 1331) or the federal civil rights jurisdiction (28 U.S.C. § 1343(a)(3)) statutes.

Surinam Airways, Nolan, and *Teledyne* involved the existence and scope of pendent party jurisdiction under the removal provision of the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. § 1441(d). The FSIA grants a foreign state defendant a broad right of removal under § 1441(d). Under § 1441(d), "[a]ny civil action brought in State court against a foreign state" may be removed to federal court by the foreign state.

In *Roco Carriers,* the Second Circuit applied *Finley* and recognized pendent party jurisdiction in admiralty cases because of the unique policies governing admiralty. The Second Circuit considered the availability of pendent party jurisdiction under 28 U.S.C. § 1292(d)(3) in light of the fact that various Circuits recognized pendent party jurisdiction in admiralty cases and that *Finley* seriously

questioned the continued viability of the doctrine. 899 F.2d at 1295, *citing Staffer v. Bouchard Transp. Co.*, 878 F.2d 638, 643 n.5 (2d Cir. 1989) (suggesting in dicta that "pendent jurisdiction apparently is no longer a viable concept"). The court refused to depart from the established rule of the Second Circuit that pendent party jurisdiction is available in the unique area of admiralty under the broadly worded statute ("Any civil case of admiralty or maritime jurisdiction") and the admiralty policy favoring efficient procedures for resolving maritime disputes. 899 F.2d at 1297.

The First Circuit's decision in *Rodriguez v. Comas* allowed the joinder of a pendent-party *plaintiff* in a § 1983 action. Mr. Rodriguez sued a municipality under 42 U.S.C. § 1983 seeking damages for wrongful arrest. Mrs. Rodriguez joined in the suit alleging that she suffered emotional distress as a result of her husband's arrest, and she sought damages under both § 1983 and state law. The First Circuit affirmed the district court's dismissal of Mrs. Rodriguez's federal claim and retention of her as a pendent party *plaintiff*. 888 F.2d at 907.

The Courts of Appeals that have considered the joinder of pendent party *defendants* under 28 U.S.C. § 1343(a)(3) have not permitted such joinder under *Finley*. *Sarmiento v. Texas Bd. of Veterinary Medical Examiners*, 939 F.2d 1242 (5th Cir. 1991); *Ortega v. Schramm*, 922 F.2d 684 (11th Cir. 1991). Further, the joinder of pendent party defendants is controlled by this Court's decision in *Aldinger v. Howard*, 427 U.S. 1 (1976), in which the Court refused to extend pendent claim jurisdiction under 28 U.S.C. § 1343(a)(3). Finally, the Eleventh Circuit found that 28 U.S.C. § 1331, as an alternative to 28 U.S.C.

§ 1343(a)(3) as a federal jurisdictional statute for § 1983 claims, does not confer federal jurisdiction over pendent party defendants. *Ortega*, 922 at 690 n. 7.

The Circuit Courts of Appeals will be confronted with few, if any, cases addressing pendent party jurisdiction under *Finley*. The United States Congress codified the doctrine of pendent jurisdiction in a supplemental jurisdiction statute, 28 U.S.C. § 1367.[2] The statute outlines specific guidelines for granting pendent jurisdiction. This case fell within the eighteen month gap between *Finley* (May 22, 1989) and the effective date of the statute (December 1, 1990). *Meyers* is not inconsistent with the new statute. Thus, there is no conflict or basis for certiorari.

The Eight Circuit properly applied *Finley* in this case. The Circuit Courts that have considered the joinder of pendent party defendants under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3) are consistent and in harmony with *Finley*.

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[2] In 1990, Congress codified the doctrine of pendent jurisdiciton at 28 U.S.C. § 1367. Congress gave district courts both power to exercise supplemental (pendent) jurisdiciton and discretion in its use. Federal courts can exercise supplemental jurisdiction over state law claims where the claims arise out of the same case or controversy as the federal claim which is before the court. 28 U.S.C. § 1367. However, even under § 1367, the federal courts should decline to exercise jurisdiction over the respondents and the claims against them. *See Heller v. CACL Federal Credit Union*, 775 F.Supp. 839, 843 (E.D.Pa. 1991) ("the court should ordinarily decline to exercise supplemental jurisdiction over state law claims when the federal claims are dismissed.").

II. The state-law medical malpractice claims do not arise from a "common nucleus of operative fact" with the settled federal claims.

A party seeking to invoke the doctrine of pendent party jurisdiction, must satisfy the threshold inquiry whether the federal court has Article III power to exercise jurisdiction over the party over which there is no independent jurisdictional basis present. Two requirements must be met to establish that the court has Article III power: (1) the federal claims to which the party seeks to append the state claims must be substantial; and (2) the state claims must arise from "a common nucleus of operative fact" such that the party "would ordinarily be expected to try them all in one judicial proceeding." *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966). *See also Finley*, 490 U.S. at 548-49.

The Eighth Circuit in *Meyers* never reached the *Gibbs* inquiry because it found that the jurisdictional statutes at issue did not permit pendent party jurisdiction. If the court had reached the issue, pendent party jurisdiction would also not be available because the state-law claims against the respondents did not derive from a "common nucleus of operative fact" with the petitioner's settled federal claims. The federal claims arose from the arrest of Kelly Meyers on July 5, 1988, and his incarceration on July 5 and 6, 1988, in New Town, North Dakota. The state-law claims arose from the medical diagnosis and treatment of Kelly Meyers after he was transported 75 miles to Minot on July 6, 1988.

The claims against the respondents did not arise from a common nucleus of operative fact with the claims over

which there was federal jurisdiction. Therefore, the federal courts lack the Constitutional power to exercise jurisdiction over the respondents. Certiorari is inappropriate.

III. Inefficiency and inconvenience and petitioner's failure to file an action in state court do not constitute a basis for the grant of certiorari.

Inefficiency and inconvenience do not constitute a basis for granting the writ. This Court in both *Finley* and *Aldinger* recognized that "the efficiency and convenience of a consolidated action will sometimes have to be forgone in favor of separate actions in state and federal court." *Finley*, 490 U.S. at 555-56, *citing Aldinger*, 427 U.S. at 18. Efficiency and convenience do not create Article III jurisdiction.

Petitioner's failure to preserve her state-law claims by filing an action in state court also does not constitute a basis for granting certiorari. Petitioner voluntarily chose to bring suit against the respondents and the state-law claims in federal court. These claims could have been asserted in state court. Even after the respondents notified her in their answers that the federal court did not have subject matter jurisdiction, she chose to prosecute the action in federal court only. Petitioner cannot complain if federal jurisdiction does not encompass all of her possible claims, since it is she who chose the federal forum and "must accept its limitations." *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 376 (1978).

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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